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**MAY 28 2002**

**OFFICE OF PETITIONS**

In re Application of	:
Ruixi Yuan et al	:DECISION DISMISSING PETITION
Application No. 09/938,923	:UNDER 37 CFR 1.137(f)
Filed: August 24, 2001	:
Attorney Docket No. 98-409RCE1CON1	:

This is a decision on the petition under 37 CFR 1.137(f),<sup>1</sup> filed March 26, 2002, to revive the above-identified application.

The petition is **dismissed** for the reasons stated below.

The record discloses that, on August 24, 2001, the date of filing of the instant application, a Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed certifying that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing."

Petitioner requests under 35 U.S.C. § 122(b)(2)(B)(ii) that the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) be rescinded and the application revived under the provisions of 37 CFR 1.137(f). Petitioner states that this application became abandoned on its filing date in view of the filing of a PCT application on June 15, 1999 corresponding to the parent application (09/098,622).

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<sup>1</sup> 37 CFR 1.137(f) provides for revival of a nonprovisional application which became abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

The instant nonprovisional application did not become abandoned as a result of the published international application filed prior to the present application. In this regard, 35 U.S.C. § 122(b)(2)(B)(iii) states:

An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional [emphasis supplied].

The statute does not provide for the situation where a certification under 35 USC 122(b)(2)(B)(i) was made, despite the fact that an application was previously filed in another country or under the multilateral international agreement. The statute at 35 USC 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 USC 122(b)(2)(B)(i) at the time of filing the application and an application was subsequently filed in a foreign country without notifying the Office within 45 days of the filing thereof.

In view of the above and since this application did not become abandoned pursuant to the provisions of 35 USC 122(b)(2)(B)(iii), a petition to revive under the provisions of 37 CFR 1.137(f) is inappropriate and must be dismissed.

As requested, the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt indicating the projected date of publication of September 5, 2002 accompanies this decision.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. § 41(c)(7). Accordingly, the petition fee of \$1,280 charged to petitioner's deposit account on March 27, 2002 will not be refunded.

This application is being forwarded to Technology Center AU 2661 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt